

§ 1653.35

5 CFR Ch. VI (1–1–16 Edition)

until the account is unfrozen. All other account activity will be permitted, including contributions, loan repayments, adjustments, contribution allocations and interfund transfers. Once a disbursement from the account is made in accordance with the restitution order or levy, the hold will be removed from the participant's account.

(d) As soon as practicable after receipt of a complete copy of a tax levy or criminal restitution order, the TSP will review it to determine whether it is qualifying as described in §1653.32 or §1653.33. The TSP will mail a decision letter to all parties containing the following information:

(1) A determination regarding whether the restitution order or levy is qualifying;

(2) A statement of the applicable statutes and regulations;

(3) An explanation of the effect the restitution order or levy has on the participant's TSP account; and

(4) If the qualifying restitution order or levy requires payment, the letter will provide:

(i) An explanation of how the payment will be calculated and an estimated amount of payment;

(ii) The anticipated date of payment.

(e) The TSP decision letter is final. There is no administrative appeal from the TSP decision.

[79 FR 53604, Sept. 10, 2014, as amended at 80 FR 52606, Sept. 1, 2015]

§ 1653.35 Calculating entitlement.

A tax levy or criminal restitution order can only require the payment of a stated dollar amount from the TSP. The payee's entitlement will be the lesser of:

(a) The dollar amount stated in the tax levy or enforcement letter; or

(b) The vested account balance on the date of disbursement, minus any outstanding loan balance.

[79 FR 53604, Sept. 10, 2014, as amended at 80 FR 52606, Sept. 1, 2015]

§ 1653.36 Payment.

(a) Payment pursuant to a qualifying tax levy or criminal restitution order will be made 30 days after the TSP decision letter.

(b) In no case will payment exceed the participant's calculated entitlement.

(c) The entire amount of a criminal restitution order or tax levy entitlement must be disbursed at one time. A series of payments will not be made. A payment pursuant to a criminal restitution order or tax levy extinguishes all rights to any further payment under that order or tax levy, even if the entire amount of the entitlement cannot be paid. Any further award must be contained in a separate criminal restitution order or tax levy.

(d) If a participant has funds in more than one type of account, payment will be made from each account in the following order, until the amount required by the tax levy or stated in the enforcement letter is reached:

(1) Civilian account;

(2) Uniformed services account;

(3) Beneficiary participant account.

(e) Payment will be made pro rata from the participant's traditional and Roth balances. The distribution from the traditional balance will be further pro rated between the tax-deferred balance and tax-exempt balance. The payment from the Roth balance will be further pro rated between contributions in the Roth balance and earnings in the Roth balance. In addition, all payments will be distributed pro rata from all TSP Funds in which the participant's account is invested. All pro rated amounts will be based on the balances in each fund or source of contributions on the day the disbursement is made.

(f) The payment is taxable to the participant and is subject to Federal income tax withholding. The tax withholding will be taken from the payee's entitlement and the gross amount of the payment (*i.e.*, the net payment distributed to the payee plus the amount withheld from the payment for taxes) will be reported to the IRS as income to the participant.

(g) A properly paid tax levy or restitution order cannot be returned to the TSP.

(h) The TSP will not hold a payment pending appeal of a criminal restitution order or the underlying conviction. The TSP will treat the criminal restitution order as a final judgment